80-1313
No. ____

FILED
FEB 4 1981
ALEXANDER L. STEVAS,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

Julia McCain Lampkin-Asam, Ph.D.
Appellant

vs.

State of Florida
Appellee

On Appeal from The Supreme Court of Florida

JURISDICTIONAL STATEMENT

Julia McCain Lampkin-Asam, Ph.D.
Appellant
Representing Self
2243 Gorham Avenue
Ft. Myers, Florida 33907

QUESTIONS PRESENTED

I. Whether a state statute, Florida Statute, Article 5, section 3(b)(3), Florida Constitution, has infringed upon the U.S. Constitutional rights ("due process" of the 5th and 14th Amendments to the U.S. Constitution and"equal protection" of the 14th Amendment to the U.S. Constitution) of the Appellant to have access to the highest court of the state, The Supreme Court of Florida?

II. Whether the Appellant's constitutional rights of "due process" (5th and 14th Amendments to the U.S. Constitution) are violated by a circuit judge making a judicial error not based on the record and by the circuit judge granting a summary judgment in a negligent case of a teacher's union (FTP-NEA) not representing the teacher, and the District Court of Appeal, First District, of the State of Florida, affirming the Circuit Court decision with the District Court of Appeal justices writing no opinion, leading to the Florida Statute, Article 5, section 3(b)(3), Florida Constitution, preventing the Appellant access to the highest court of the state, The Supreme Court of Florida, when the original circuit court case was not tried by a jury due to a judge making an erroneous decision of summary judgment in favor of the defendant, FTP-NEA (Florida Teaching Profession, National Education Association)?

III. Whether an union, (FTP-NEA), the teacher's union, can claim representation at an arbitration of the teacher when the FTP-NEA was not present at any arbitration and a letter from FTP-NEA to Dr. Julia Asam, dated July 18, 1979, (Exhibit G attached to

the Amended Complaint in the Circuit Court which stated,

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."?

IV. Whether the Supreme Court of the U.S. can take original jurisdiction of the state case (Julia L. Asam, v. FTP-NEA, Florida Teaching Profession-National Education Association - case no. 79-2044 in the circuit court and case no. TT-270 in the District Court of Appeal, First District) when the Appellant has had her U.S. Constitutional rights of "due process" (5th and 14th Amendments to the U.S. Constitution) and "equal protection" (14th Amendment to the U.S. Constitution) violated because a new state statute (Florida Statute, Article 5, section 3(b)(3), Florida Constitution) prevented the Appellant to have access to the highest state court, The Supreme Court of Florida?

PARTIES TO THE PROCEEDING

Julia McCain Lampkin-Asam, Ph.D., (Julia L. Asam), Appellant (Plaintiff/Petitioner below).
FTP-NEA (Florida Teaching Profession-National Education Association) (Defendant/-Respondent below), John Myrick, President
State of Florida
Hon. Governor Daniel Robert Graham
Attorney General, Jim Smith
The Supreme Court of Florida
District Court of Appeal, First District
Circuit Court of the Second Judicial Circuit in and for Leon County, Florida

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No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

Julia McCain Lampkin-Asam, Ph.D.
Appellant

vs.

State of Florida
Appellee

On Appeal From The Supreme Court
of Florida

JURISDICTIONAL STATEMENT

STATEMENT OF THE CASE

This is an appeal from the final order of the Supreme Court of Florida dismissing case no. 59,871 (styled Julia L. Asam v. FTP-NEA (Florida Teaching Profession-National Education Association),union on October 31, 1980, the same date that the

$75.00 filing fee was received. The Supreme Court of Florida failed to consider the jurisdictional brief and appendix timely filed by the Appellant because the new Florida Statute, Article 5, section 3(b)(3) of the Florida Constitution prevents a case from the District Court of Appeal, First District, from being considered in The Supreme Court of Florida when the District Court of Appeal affirmed the lower circuit court decision without writing an opinion.

This Florida Statute Article 5, section 3(b)(3) of the Florida Constitution is repugnant to the U.S. Constitution, 5th and 14th amendments.

The petition for rehearing in the District Court of Appeal, First District, was denied October 8, 1980. On September 9, 1980, the District Court of Appeal, First District, affirmed the decision of the lower court of summary judgment in favor of the defendant, FTP-NEA and the District Court of Appeal, First District, failed to write an opinion, thus automatically according to the new Florida Statutes, Article 5, section 3(b)(3) of the Florida Constitution,prevented the case from being considered by the highest court of the state, The Supreme Court of Florida.

The Appellant's constitutional rights ("due process" of the 5th and 14th amendments to the U.S. Constitution, and "equal protection" of the 14th amendments to the U.S. Constitution) have been violated by the Florida Statute, Article 5, section 3(b)(3) of the Florida Constitution since the District Court of Appeal, First District, affirmed a Summary Judgment which was based on a <u>false statement</u> by the judge of the circuit court which states, (see a5 in the appendix),quoted at the top of the next page,

> "The file reflects that the Plaintiff received the legal representation to which she was entitled through her contract of membership with the Defendant." (See p. a-5 of the appendix).

In reality the record does not reflect that the FTP-NEA gave any legal representation to Dr. Julia Asam in the school year 1977-78. See quote from letter in record (p. 62) and Exhibit G of the Amended Complaint. This letter from FTP-NEA dated July 18, 1979 states,

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

The District Court of Appeal, First District, just affirmed a fraudulent reason by the Circuit Judge since his decision of Summary Judgment was based on the above false statement.

The point is that a citizen of the U.S., as well as Florida, the Appellant, did not have her day in court in any court in Florida when the union, FTP-NEA, failed to represent her at any arbitration.

The Supreme Court of Florida according to the new Florida Statute, Article 5, section 3(b)(3) of the Florida Constitution did not consider the case no. TT-270 from the District Court of Appeal, First District, but dismissed the case which was given the number 59,871 in The Supreme Court of Florida. Further, The Supreme Court of Florida made a statement that a motion for rehearing would not be entertained.

The Notice of Appeal to The Supreme Court of the United States was filed Nov. 12, 1980 in The Supreme Court of Florida because the Florida Statute Article 5, section 3(b)(3) of the Florida Constitution had infringed upon the constitutional

rights of the Appellant who was denied "due process" and equal protection of the laws, (14th Amendment to the U.S. Constitution].

The motion of Summary Judgment was granted by the Circuit Judge on December 21, 1979, with the judge giving a false reason as quoted on page 3 of this Jurisdictional Statement.

There was no doubt about it the FTP-NEA was not present at any arbitration. The arbitrator in his Discussion and Opinion made the following statement found on p. a-5 of the appendix.

> "The most significant difference between this and other grievance arbitrations was the absence of the teacher's representative."

Not only did the FTP-NEA show negligence by not having a representative at Dr. Asam's arbitraions, but the FTP-NEA breached the contract between a union member, Julia Asam, and the teacher's union (FTP-NEA). Therefore, the circuit judge should not have granted a summary judgment when genuine issues of material facts existed.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment V

No person shall ... be deprived of life, liberty or property, without due process of law;..."

United States Constitution, Amendment XIV

"Section 1. All persons born or

naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside; No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."
Quotes from Constitutional Law, 4 ed., P.A. Freund, A.E. Sutherland, M.D. Howe and E.J. Brown, Little, Brown & Co., Boston, 1977.

Florida Statutes.

After April 1, 1980, Article 5, section 3(b)(3) of the Florida Constitution, reads,

> "May review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law."

(See p. a-1 of the appendix for the document showing the Supreme Court of Florida according to Jenkins vs. State, 385 So 2d 1356 (Fla. 1980) lacked the jurisdiction to review District Court of Appeal's decision, which read in its entirety "Per Curiam Affirmed". See p. a-3 of the appendix showing that the District Court of Appeal, First District made the decision in the instant case which read "Per Curiam Affirmed", an erroneous decision by the justices of the District Court of Appeal.)

Quotes from the U.S.C. concerning the jurisdiction of The Supreme Court of the United States.

28 USC Section 1257 (2)
"By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

28 USC Section 2106
"The Supreme Court of any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstnaces."

42 USC section 1983
"Every person who, under color of any statute, ordinance, regulation, custom, or usuage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities accured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

28 USC section 1343 (3)
"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usuage, or any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

SUBSTANTIALITY OF THE QUESTIONS PRESENTED

I

The state statute, Florida Statute, Article 5, section 3(b)(3), of the Florida Constitution, did infringed upon the U.S. Constitutional rights ("due process" of the 5th and 14th Amendments to the U.S. Constitution and "equal protection" of the 14th Amendment to the U.S. Constitution) of the Appellant to have access to the highest court of the state, The Supreme Court of Florida.

The Florida Statute, Article 5, section 3(b)(3) of the Florida Constitution states, after April 1, 1980,

> "May review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law."

The District Court of Appeal, First District, decision in the instant case is expressly and directly in conflict with the U.S. Supreme Court case, Vaca v. Sipes, 386 U.S. 171, 87 S Ct 903, 17 L Ed. 2d 842 at 846 which states,

> "A union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion."

However, the Supreme Court of Florida did not review the decision of the District Court of Appeal, First District, giving as the reason that the court was without jurisdiction with the citation Jenkins vs.State, 385 So 2d 1356 (Fla. 1980)which states,

> "Supreme Court lacked jurisdiction to review District Court of Appeal's decision, which read in its entirety "Per Curiam Affirmed,"...

The District Court of Appeal, First District, should have written an opinion instead of just affirming the lower circuit court when the judge of the lower circuit court made a gross judicial error by claiming the file showed representation for Julia Asam, without the judge making any reference to where in the record. In reality the record did not show any legal representation by FTP-NEA in the school year in question (1977-78) but the record showed just the opposite as evidenced by the July 18, 1979 letter from FTP-NEA which states,

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

Florida case law is presented here showing that an union must support its members at arbitration. See Frederick v. School Board of Monroe County, Fla. App. 307 So 2d 463 at 463,

> "Teachers' associations had standing to bring suit on behalf of nontenured teacher to compel school board to exhaust the grievance procedure it adopted and to submit teachers' grievance to an arbitrator."

This Frederick v. School Board of Monroe County supra case shows that FTP-NEA, the teachers' union for the Appellant, should have provided legal representation for Julia Asam at the arbitration step of the grievance.

In Thompson v. Machinist Lodge 1049, 258 F Supp. 235 (E.D. Va., 1966), labor unions owe a duty of fair representation to their members.

> "Labor unions owe a duty of fair representation to their members and a union becomes liable in damages for breaching this duty."

There is no doubt about it that the FTP-NEA

is liable for the damages to Julia Asam because she did not have any legal representation from the FTP-NEA at two arbitrations.

See Robert A. Gorman, "Basic Text on Labor Law Unionization and Collective Bargaining" p. 721 which states,

"Court will more openly ackowledge that a union at least in the processing of grievances... owes the employees it represents a duty of due care in the protection of their interests."

FTP-NEA failed to exercise due care in the protection of Julia Asam's interests, and as a result Julia Asam can not receive a teaching position anywhere in the U.S.A. when she has a valid teaching certificate until 1994 from the State of Florida for teaching science, biology and chemistry, as well as a Rank I in administration and supervision.

The Lake County Education Association v. School Board of Lake County 360 So 2d 1280 at 1284 states,

> "Where an agreement has been reached on procedures the arbitrator's decision granting a nontenured teacher relief because of the failure to follow such procedures has been upheld."

According to the quote above from p. 1284, nontenured teacher (annual contract teacher) has rights for reinstatement when the administrator, in his evaluation of the teacher, has violated administrative contractural procedures. Since the FTP-NEA failed to legally support Julia Asam, when the theory in law existed for reinstatement, the final summary judgment should have been reversed by the District Court of Appeal, First District. The Lake County Education Association v. School Board of Lake County supra was decided in the District Court of Appeal, Second District. Therefore, the District

Court of Appeal, First District, is expressly and directly in conflict with the decision in the instant case with the District Court of Appeal, Second District. The First District Court of Appeal should have written an opinion with all the case law in the state of Florida and the U.S. Supreme Court case Vaca v. Sipes supra; therefore, the final summary judgment should have been reversed and remanded by the District Court of Appeal, First District. The point is that the District Court of Appeal, First District, ignored the Lake County ... decision when an administrative contractural procedure is violated in a teachers' evaluation, even nontenured teacher (annual contract teacher) has rights.

The new Florida Statute Article 5, section 3(b)(3) of the Florida Constitution infringed upon the constitutional rights of Julia Asam to have access to a higher court of the state, The Supreme Court of Florida because the District Court of Appeal, First District, not only made the mistake of affirming the lower court decision but the District Court of Appeal, First District, failed to write an opinion and only stated "Per curiam affirmed" and with this new Florida Statute Article 5, section 3(b)(3) the Supreme Court of Florida claimed no jurisdiction in the case. The Supreme Court of the United States should take original jurisdiction of this case and reverse the summary judgment based on the facts and law in the instant case.

II

See p. 11, the next page for II.

The Appellant's constitutional rights of "due process" (5th and 14th amendments to the U.S. Constitution) are violated by the circuit judge making a judicial error not based on the record and by the circuit judge granting a summary judgment in a negligent case of a teacher's union (FTP-NEA) not representing the teacher. The Appellant's constitutional rights were further violated when the District Court of Appeal, First District, of the State of Florida, affirmed "Per curiam affirmed" the circuit court decision of summary judgment with the justices writing no opinion leading to the Florida Statute, Article 5, section 3(b)(3) of the Florida Constitution preventing the Appellant access to the highest court of the state, The Supreme Court of Florida.

The District Court of Appeal, First District, just affirmed a fraudulent reason by the circuit judge for the decision of summary judgment. The circuit judge stated on p. a-5 in the appendix in his granting the summary judgment,

> "The file reflects that the Plaintiff received the legal representation to which she was entitled through her contract of membership with the Defendant."

In reality the record does not reflect that the FTP-NEA gave any legal representation to Dr. Julia Asam in the school year 1977-78. The following quote is from a letter dated July 18, 1979, to Dr. Julia Asam,

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

The point is the District Court of Appeal, First District, affirmed this false statement by the judge of the Circuit Court. Since the District Court of Appeal, First District, did not write an opinion, it is not known if an arbitrary decision not to

reverse the final summary judgment because the affirmed decision was based on a false statement by the judge (see exact quote on p. 11 of this Jurisdictional statement).

The state of Florida law clearly states that disputed facts are not decided by summary judgment. See American Bankers Insurance Company of Florida v. Nolan's Garage, Inc. Fla. 162 So 2d 727 at 728,

> "Summary judgment should be denied if evidence by affidavit, pleadings, depositions or otherwise demonstrates existence of a genuine issue of material fact, 31 F.S.A. Rules of Civil Procedure, rule 1.510(c)."

Also see Byrd, v. Leach, Fla. App. 1979, 226 So 2d 866, and Producers Fertilizer Co. v. Holder, Fla. App. 1968, 208 So 2d 492. Not only must no genuine issue as to material fact exist but the moving party must be entitled to judgment as a matter of law. See Knight v. American Heritage Life Ins. Co. Fla. App. 1970, 237 So 2d 224. The judge of the lower circuit court failed to show that FTP-NEA was entitled to a final summary judgment as a matter of law; no legal citation was given in his order dated Dec. 21, 1979, (see a-4 in the appendix).

Therefore, the District Court of Appeal, First District, is expressly and directly making a conflicting decision against the law of the state of Florida in the above cases on this page. Summary judgment is not made when genuine issues of material fact exists, especially when there are disputed facts.

Cases showing negligence are not ordinarily decided by summary judgment.

See Dornton v. Darby, CA 5th 1967, 373 F 2d 619,

> "Issues of negligence, contributory negligence, and probable cause cannot ordinarily be determined on summary judgment."

The FTP-NEA, the teacher's union can not claim representation at an arbitration of the teacher when the FTP-NEA was not present at any arbitration. The FTP-NEA is impeached by their own letter dated July 18, 1979, which states,

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

Further, this same quote from the letter by FTP-NEA impeaches the statement by the judge of the circuit court giving the following reason for his decision of final summary judgment in favor of the defendant, FTP-NEA. The judge of the circuit court gave as the reason for his final summary judgment,

> "The file reflects that the Plaintiff received the legal representation to which she was entitled through her contract of membership with the defendant." (See a-5 of the appendix).

This statement by the judge is incorrect. Because the judge made an erroneous judicial decision, this should be grounds alone for reversal of the decision of final summary judgment.

FTP-NEA breached the contract between the union, FTP-NEA and the union member, Julia Asam, by the FTP-NEA not providing any legal service for the arbitration step of the grievance when the By-laws clearly stated legal service would be provided,

> "i. To be afforded due process through the fair and impartial hearing of grievances, including binding arbitration, as a means of resolving disputes." (from the By-Laws of FTP-NEA, Bill of Teacher Rights). (see appendix in District Court of Appeal, p. 49).

The District Court of Appeal, First District decision in the instant case is expressly and directly in conflict with the

U.S. Supreme Court case, Vaca v. Sipes, 386 U.S. 171, 87 S Ct, 903, 17 L Ed. 2d 842 at 846 which states,

> "A union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion."

IV

The Supreme Court of the United States can take original jurisdiction of the state case according to 28 USC Section 2106 which states,

> "The Supreme Court of any other court of appellate jurisdiction may affirm, modify, vacate, set aside, or reverse any judgment...and may remand the cause and direct the entry of such appropriate judgment...or require such further proceedings to be had as may be just under the circumstances."

Reviewing court has power not only to correct error in judgment under review but to make such disposition of case as justice requires. In re Elmore, 1967, 382, F 2d 125, 127, U.S. App. D.C. 176.

The Supreme Court's duty is not limited to elaboration of constitutional principles; the Court must also in proper cases review the evidence to make certain that those principles have been constitutionally applied. Greenbelt Co. op. Pub. Ass'n v. Bresler, Md. 1970, 90 S Ct. 1537, 398 U.S. 6, 26 L Ed 2d 6.

United States Supreme Court may review directly the decision of the highest state courts on the constitutionality, under the Federal Constitution, of state statutes. Horwitt v. Horwitt, D.C. Conn. 1950, 90 F Supp. 528.

The Supreme Court's appellate jurisdiction was properly invoked, where the state court

judgment sought to be reviewed upheld a state statute against contention that on its face and as applied, the statute violated the federal Constitution, Bantam Books, Inc. v. Sullivan, R.I. 1963, 83 S Ct 631, 372 U.S. 58, 9 L Ed 2d 584.

While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which is asserted to violate the Federal Constitution, the name given to the statute is not conclusive, and it must be judge by its necessary effect, and if that is to violate the Constitution of the United States the law must be declared void. Standard Oil Co. v. Graves, Wash. 1919, 39 S Ct 320, 249 U.S. 389, 63 L Ed. 662. (Emphasis added.)

The only basis for federal jurisdiction under 42 USC section 1983 is the deprivation under color of state law of any rights, privileges, or immunities secured by Constitution and laws. Krum v. Sheppard D.C. Mich. 1966, 255 F Supp. 904, affirmed 407 F 2d 490.

In the instant case, a new Florida Statute Article V section 3(b)(3) of the Florida Constitution has prevented the Appellant access to the highest court of the state, The Supreme Court of Florida. Thus, the Appellant's contitutional rights of "due process" in a court (5th and 14th Amendments to the U.S. Constitution) and equal protection of the law (14th Amendment to the U.S. Constitution) have been infringed by this new Florida Statute (Article V, section 3(b)(3), Florida Constitution) because the Appellant's right to a trial by a jury was blocked by the erroneous decision of summary judgment by a circuit judge.

CONCLUSION

1. The new Florida Statute, Article V, section 3(b)(3) of the Florida Constitution did infringe upon the Appellant's constitutional rights of "due process" (5th and 14th Amendments to the U.S. Constitution) and equal protection of the law (14th Amendment to the U.S. Constitution) because the Appellant was not allowed access to the highest court of the state, (The Supreme Court of Florida) due to the new Florida Statute.

2. The District Court of Appeal, First District erred:

(1) in not reversing the summary judgment since the circuit judge based his decision for summary judgment on a false statement by himself (see p.3 of this Jurisdictional Statement for quote) due to the fact the record did not reflect any legal representation by FTP-NEA at any arbitration of the Appellant.

(2) by only writing "Per curiam affirmed" so that the new Florida Statute (Article V, section 3(b)(3), Florida Constitution) would block the Appellant's access to the Supreme Court of Florida when both Florida case law and federal Supreme Court law were expressly and directly against the decision by the District Court of Appeal, First District.

3. The Circuit court judge erred:

(1) by granting a summary judgment for his fraudulent reason (see p. 3 of this Jurisdictional Statement for quote) when in reality the record reflected just the opposite; there was no representation at any arbitration by the FTP-NEA; further, the judge's reason of granting the summary judgment was impeached by a letter from the FTP-NEA dated July 18, 1979, which stated,

"FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

(2) by granting a summary judgment when genuine issues of material fact existed in the case.

(3) by granting a summary judgment in a negligent case of no legal representation by the union, FTP-NEA.

4. The Supreme Court of The United States does have jurisdiction in a case when a state statute infringes on the federal Constitution. The Supreme Court of the United States can take original jurisdiction to see that justice is done or The Supreme Court of the United States can remand to a lower appellate court with instructions to judge the case based on the Florida law and federal law, especially since the Appellant's rights to a trial by a jury were prevented by a circuit judge making an erroneous decision of summary judgment.

Respectfully submitted,

Julia McCain Lampkin-Asam, Ph.D.
Appellant, Representing Self
2243 Gorham Ave., Ft. Myers, Fla.33907

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd of Feb. 1981 a copy of the above Statement of Jurisdiction was mailed to the State of Florida, Hon. Gov. Daniel Robert Graham and the Attorney General, Jim Smith, The Capitol, Tallahassee, Fla.; The Supreme Court of Florida and the District Court of Appeal, First District, The Supreme Court Building, Tallahassee, Fla.; Circuit Court of the Second Judicial Circuit in and for Leon County, Leon County Courthouse, Tallahassee, Fla. and FTP-NEA, Mr. John Myrick,Pres. and Mr. Ronald Meyer, Attorney, 213 S. Adams St. Tallahassee, Fla.

By:_____

APPENDIX

Exhibit A

In the Supreme Court of Florida
Friday, October 31, 1980

Julia L. Asam, Ph.D. Petitioner,	)	Case no. 59,871
vs.	)	
FTP-NEA (Florida Teaching Profession-National Education Association, Respondent.	)	District Court of Appeal, First District No. TT-270

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. Jenkins vs. State, 385 So 2d 1356 (Fla. 1980).

No Motion for Rehearing will be entertained by the Court.

A True Copy

TEST:

(Seal)

Sid J. White
Clerk Supreme Court
s/Dulibrie Causseaux
Deputy Clerk

C
cc:Hon. Raymond E. Rhodes,Clerk
Hon. Paul F. Hartsfield,Clerk
Hon. Ben C. Willis,Chief Judge
Julia L. Asam, Ph.D.
Ronald Meyer, Esquire

Exhibit B

District Court of Appeal, First District
Supreme Court Building
Tallahassee, Florida 32304
Telephone No. (904) 488-6152
October 8, 1980
Case no. TT-270

Julia L. Asam, P.D. vs. FTP-NEA
Appellant/ Petitioner, Appellee/ Respondent

Memorandum to Counsel or Parties Listed Below

The following action was taken in the above styled case on the above date:
Petition for Rehearing denied.

(Seal) By Order of the Court
Raymond E. Rhodes, Clerk

IHEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:
Julia L. Asam, Pro se, Ft. Myers, Florida 33907; Ronald Meyer, Esquire, Tallahassee, Florida 32301.

s/Karen Robert
Deputy Clerk

Exhibit C

In the District Court of Appeal
First District, State of Florida

Julia L. Asam, Ph.D., Appellant, vs. FTP-NEA (Florida Teaching Profession-National Education Association), union Appellee	Not final until time expires to file rehearing petition and disposition thereof if filed. Case no. TT-270

Opinion filed September 9, 1980.

An appeal from the Circuit Court for Leon County. James E. Joanos, Judge.

Julia L. Asam, in proper person, for Appellant.

Ronald G. Meyer, General Counsel for Florida Teaching Profession-National Education Assiciation; union, for Appellee.

PER CURIAM.

AFFIRMED.

Robert Smith, Booth and Shaw, JJ., Concur.

Exhibit D

In the Circuit Court of the
Second Judicial Circuit, in
and for Leon County, Florida

Julia L. Asam, teacher, Plaintiff,	)	
vs.	)	
FTP-NEA (Florida Teaching Profession-National Education Association) Union, Defendant.	)	Case no. 79-2044

Final Summary Judgment
In Favor Of Defendant

THIS CAUSE came on to be heard before the Court with respect to the matters disposed of by this Order. The Court has considered legal arguments presented in behalf of the parties, studied the file and become advised in the premises.

Upon consideration, it is ORDERFD that:

1. The motions of Plaintiff for Default and motion to hold the Defendant's president in contempt be and are hereby denied.

2. Plaintiff's motions to strike the affidavit accompanying the "Motion To Dismiss, Strike and, in the Alternative For Summary Judgment on Behalf of the Defendant" be and is hereby denied.

3. In regard to the "Motion To Dismiss Strike and, in the Alternative For Summary Judgment on Behalf of the Defendant", as to Counts 1 and 2 of the Amended Complaint, the Motion To Dismiss is granted and Counts 1 and 2 of the Amended Complaint are hereby dismissed as neither of those counts states a cause of action upon which relief can be granted. As to Count 3 of the Amended Complaint Defendant's Motion for Summary Judgment be and is hereby granted. There is

found to be no genuine issue of material fact. The file reflects that the Plaintiff received the legal representation to which she was entitled through her contract of membership with the Defendant.

4. In light of the foregoing, the other motions pending in the file are rendered moot.

5. Wherefore, it is ADJUDGED that Plaintiff, JULIA L. ASAM, take nothing by this action and that Defendant, FTP-NEA (Florida Teaching Profession-National Education Association), go hence without day.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 21st day of December, 1979.

s/James E. Joanos
Circuit Judge

Copies furnised to:
Julia L. Asam, Ph.D.,
2243 Gorham Avenue,
Ft. Myers, Florida 33907

Ronald G. Myeer, Esquire
FTP-NEA
123 South Adams Street
Tallahassee, Florida 32301

Exhibit E

DISCUSSION AND OPINION

Before discussing the merits of the grievance the Arbitrator wishes to call attention to, and comment upon, certain unusual aspects of the case. The most significant difference between this and other grievance arbitrations was the absence of the teacher's representative. That is Dr. Asam presented her own case apparently with no expert advice or assistance...

By arbitrator, Dr. Sherman

Exhibit F

In the Supreme Court of Florida

Julia McCain Lampkin-Asam, Ph.D, Appellant, Petitioner	Case no. 59,871
v.	District Court of Appeal, First
State of Florida Appellee, Respondent	District No.TT-270
(Filed Nov. 12, 1980) (Supreme Court of (Florida	Circuit Court Second Judicial Circuit in and for Leon County case no. 79-2044

Notice of Appeal to the Supreme Court of the United States

NOTICE IS HEREBY GIVEN that Julia McCain Lampkin-Asam, Ph.D., (Julia L. Asam) Appellant, Petitioner, hereby appeals to the Supreme Court of the United States from a final order of the Supreme Court of Florida dismissing case no. 59,871 (styled Julia L. Asam v. FTP-NEA (Florida Teaching Profession-National Education Association, union) on October 31, 1980, the same date the $75.00 filing fee was received. The Supreme Court of Florida failed to consider the jurisdictional Brief and appendix timely filed by the Appellant. The new Florida Statute, Article 5, section 3(b)(3), (Florida Constitution), prevents a case from the District Court of Appeal, First District, from being considered in the Supreme Court of Florida, thus, violating the constitutional right of the Appellant to have "due process" and equal protection under the law. This Florida Statute, Article 5, section 3(b)(3) (Florida Constitution) is repugnant to the U.S. Constitution, fourteenth amendment.

The Appellant rights have been violated by the Florida Statute since the District Court of Appeal, First District, affirmed a Summary Judgment which was based on a false statement by the judge, which states,

> "The file reflects that the Plaintiff received the legal representation to which she was entitled through her contract of membership with the Defendant."

In reality the record does not reflect that the FTP-NEA gave any legal representation to Dr. Julia Asam in the school year 1977-78. Quote from letter in record dated July 18, 1979 from FTP-NEA,

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

(Exhibit G of the Amended Complaint - Record p. 62).

The District Court of Appeal, First District, just affirmed a fraudulent reason by the circuit judge since his decision of Summary Judgment was based on the above false statement.

Then, the Supreme Court of Florida according to the new Florida Statute, Article 5, section 3(b)(3) (Florida Constitution) did not consider the case no. TT-270 at all from the District Court of Appeal, First District, but dismissed the case and made a statement would not entertain a rehearing motion. This Florida Statute, Article 5, section 3(b)(3) prevented the Supreme Court of Florida even considering the jurisdictional brief timely filed by the Appellant. The point is that a citizen of the U.S. as well as Florida, did not have her day in court in any court in Florida when the union, FTP-NEA, failed to represent her at any arbitration.

The District Court of Appeal, First District, decision in the instant case is

expressly and directly in conflict with the U.S. Supreme Court case, Vaca v. Sipes, 386 U.S. 171, 87 S Ct 903, 17 L Ed. 2d 842 at 846 which states,

> "A union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion."

Additional cases will be presented in the jurisdictional brief to the Supreme Court of the United States.

This Notice of Appeal is to appeal the decision in the Supreme Court of Florida where the Florida Statute Article 5, section 3(b)(3) (Florida Constitution) has infringed upon the constitutional rights of the Appellant who has been denied "due process" and equal protection of the laws, (14th amendment to the U.S. Constitution). The Appellant respectfully requests the Supreme Court of the United States to take original jurisdiction and review the case 79-2044 in the circuit court, the Summary Judgment, since genuine issues of material fact existed.

This appeal is taken pursuant to Title 28, United States Code, Section 1257(2), 28 United States Code, Section 2106, 28 United States Code, Section 1343(3) and 42 United States Code, Section 1983.

Respectfully submitted,

Julia McCain Lampkin-Asam, Ph.D.
Representing Self
Appellant, Petitioner
2243 Gorham Ave.
Ft. Myers, Florida 33907

Certificate of Service and Proof of Service on following pages.

Notice of Appeal to the Supreme Court of the United States from the Supreme Court of Florida case no. 59,871, (page 3)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was hand-delivered to Hon. Daniel Robert Graham, Governor of the State of Florida, The Capitol, Tallahasse, Florida; Hno. Jim Smith, Attorney General, State of Florida, The Capitol, Tallahassee, Florida; Clerk, Mr. Rhodes, District Court of Appeal, Firest District, Supreme Court Building, Tallahassee, Florida; Clerk, Mr. Hartsfield, Circuit Court, Second Judicial Circuit Court in and for Leon County, Tallahassee, Florida; and mailed a copy to FTP-NEA (Florida Teaching Profession-National Education Association), Attn: Mr. John Myrick, President, Mr. Ronald Meyer, 213 South Adams St., Tallahassee, Florida 32301 this 12th day of November 1980.

By: _____

Proof of service was given to the Supreme Court of Florida at the time of filing Nov. 12, 1980.

APR 28 19
ALEXANDER L. STEVAS
CLERK

No. 80-1313

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

JULIA McCAIN LAMPKIN-ASAM,
PhD, Appellant,

v.

FTP-NEA (FLORIDA TEACHING
PROFESSION-NATIONAL EDUCATION
ASSOCIATION), Appellee

ON APPEAL FROM THE SUPREME
COURT OF FLORIDA

MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE TO AFFIRM DECISION BELOW

RONALD G. MEYER
GENERAL COUNSEL

FTP-NEA
FLORIDA TEACHING PROFESSION-
NATIONAL EDUCATION ASSOCIATION
213 South Adams Street
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No. 80-1313

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

JULIA McCAIN LAMPKIN-ASAM,
PhD, Appellant,

v.

FTP-NEA (FLORIDA TEACHING
PROFESSION-NATIONAL EDUCATION
ASSOCIATION), Appellee

ON APPEAL FROM THE SUPREME
COURT OF FLORIDA

MOTION TO DISMISS APPEAL OR, IN
THE ALTERNATIVE TO AFFIRM
DECISION BELOW

The Appellee, FTP-NEA (Florida Teaching Profession-National Education Association), hereinafter referred to as "FTP-NEA", respectfully submits that the appeal filed herein should be dismissed for want of a substantial federal question and for the lack of jurisdiction of this Court or, in the alternative, the decision of the Supreme Court of Florida should be affirmed.

STATEMENT OF THE CASE

The action subtending the instant appeal arose when the Appellant was not reappointed to her teaching position as an annual contract teacher in the Lee County, Florida public school system. The FTP-NEA's local affiliate, the Teachers Association of Lee County (An autonomous employee organization which was not made a party to these proceedings in the courts below) was at all times relevant hereto, the certified collective bargaining representative for a unit of employees in which the Appellant was employed. The local affiliate of the FTP-NEA had negotiated a collective bargaining agreement which, inter alia, provides a grievance and arbitration mechanism which can be used for resolution of employment related disputes.

The FTP-NEA maintains a policy, adopted by its Board of Directors, providing for legal

assistance to be accorded to members and its local affiliates in certain matters relating to the employment relationship between teachers and their employing school districts. Pursuant to such policy, legal representation was accorded to the Appellant by the FTP-NEA in the conduct of several grievance proceedings which she had initiated with her employer.

The Appellant sought further legal assistance from the FTP-NEA in the conduct of an arbitral proceeding seeking to overturn the decision which had been reached by her employer not to reappoint her for an additional year of employment. In accordance with the legal services policy of the FTP-NEA, the Appellant's legal case was reviewed and determined to be without a sound legal basis. Thus, further legal services at the expense of FTP-NEA were denied.

The Appellant did not exhaust the internal procedures available to her in seeking to over-

turn the non-funding determination. Rather, she initiated a pro se complaint in the Circuit Court of Leon County, Florida, seeking damages from the FTP-NEA. Each of the claims stated in the complaint, and its several amendments, were based upon state law theories sounding in tort (negligent handling of a grievance), breach of contract (alleging that the "contract of membership" in the FTP-NEA entitled the Appellant to limitless legal services) and alleging that the FTP-NEA was under a duty of fair representation to the Appellant and that such duty was breached.

The trial court accorded the Appellant broad latitude and carefully considered all of the issues presented and finally entered summary judgment in favor of the FTP-NEA (See pp. a-4 through a-5 of appendix to Appellant's jurisdictional statement).

The Appellant prosecuted an appeal to the Florida District Court of Appeal, First District,

from the trial court's decision. That Court considered the briefs of the parties, conducted oral argument, and thereafter entered a per curiam affirmance of the summary judgment entered in favor of FTP-NEA. (See p. a-3 of the appendix to Appellant's jurisdictional statement.) The Appellant's petition for rehearing was denied by the district court of appeal. (See p. a-2 of the appendix to Appellant's jurisdictional statement.)

Thereafter, the Appellant sought to have the district court of appeal decision reviewed by the Supreme Court of Florida by seeking to invoke conflict jurisdiction. The Supreme Court of Florida, relying upon an earlier decision interpreting its constitutional powers of review, summarily dismissed the Appellant's petition and denied rehearing. (See p. a-1 of the appendix to Appellant's jurisdictional statement.)

The Appellant's attempt to invoke the jurisdiction of the Supreme Court of the United States derives solely from the failure of the Supreme Court of Florida, acting in accordance with the provisions of Article V, Section 3(b)(3) of the Florida Constitution, to review the intermediate appellate decision. At no prior time in the prosecution of this case has there been any federal issue raised by the Appellant.

SUMMARY OF ARGUMENT

This appeal should be dismissed for want of a substantial federal question and for the lack of jurisdiction of this Court.

The Appellant's entitlement to judicial review by the courts of the State of Florida, of her non-federal state law claims raised in the proceedings below, derives solely from the state constitutional provisions defining the scope of review available. While it is beyond cavil that

the Appellant is entitled to, and did receive, the full review opportunities granted by the Florida Constitution, there is no independent federal constitutional right to review beyond that accorded by the state constitution.

Succinctly stated, the Appellant's state law claims received complete consideration by the tribunals of the State of Florida judicial system.

The Appellant's attempt to invoke this Court's jurisdiction must fail since the issues posed do not depict a circumstance where the court of last resort in Florida has rendered a decision on a federal question forming an appropriate basis for review. Rather, under the guise of generating a federal question, this Court is being asked to review the proper decision of the Supreme Court of Florida declining to exercise its jurisdiction to review a state law claim.

ARGUMENT

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THE APPEAL

The Tenth Amendment to the Constitution of the United States reserves to the States and to the people the power to enact constitutions, laws and other regulations relating to state matters so long as such provisions do not offend specific powers delegated to the United States exclusively. People of State of N.Y. v. O'Neill, 359 U.S. 1 (1959).

In accordance with such authority, the people of the State of Florida, voting in a referendum on March 11, 1980, amended Article V, Section 3(b)(3) of the Florida Constitution relating to the review powers of the Supreme Court of Florida. The change limited the review powers of the Supreme Court of Florida to review the decisions of district courts of appeal which expressly and

directly pose a conflict with prior district court of appeal or supreme court decisions. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).[1/]

It was in reliance upon the Jenkins, supra, decision that the Supreme Court of Florida summarily declined to review the Appellant's state law claims.

Before this Court, the Appellant asserts a federally protected right to review of state law claims by the highest court in the state. While the Appellant plainly has a property interest, protected by the Fourteenth Amendment to the Constitution of the United States, to receive the full benefits of the Florida Constitution, it is

---

1/ The change in the constitution probably did not deprive the Appellant of review; it would most likely have been denied even prior to the change in the constitution since the district court of appeal decision was in accordance with, not conflict with, prior decisions on the subject. That is, of course, conjecture at this point since jurisdiction was summarily denied by the court.

the Florida Constitution as constructed by the Florida courts, which delineates the parameters of that right. As this Court noted in Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972):

> "Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law..." Id p. 577

The Appellant's claim to a federally protected right to limitless review of state claims by the state judiciary is without merit. It has long been recognized by this Court that the States have the absolute right to determine the scope of review offered by state tribunals. John v. Paullin, 231 U.S. 583 (1913); Davis v. Packard, 33 U.S. 312 (1834). It is facially apparent from the jurisdictional statement filed herein, that the Supreme Court of Florida dealt

solely with state law issues, in accordance with state constitutional powers, in declining to review the Appellant's claims. Since no federal issues were raised or adjudicated by the courts below, the instant appeal effort fails for want of a substantial federal question.

THE SUPREME COURT OF THE UNITED STATES DOES NOT HAVE ORIGINAL JURISDICTION TO CONSIDER THE APPELLANT'S CLAIM

Since the origin of the Appellant's putative federal constitutional claim derives, by her theory, from the failure of the Supreme Court of Florida to accord review and upon the failure of the Florida Constitution to provide adequate due process, none of the claims presented before this Court have been, or could have been raised in the proceedings below. Nor do the constitutional shortcomings which are alleged to exist and upon which the instant effort is undergirded,

relate in any manner to the actions of the FTP-NEA. Obviously, the FTP-NEA is not the proper party to an attack of the instant type, since the FTP-NEA has no power to alter the Florida Constitution or to affect the review of the Supreme Court of Florida. Thus, the State of Florida, the real party in interest in a claim such as is being raised herein by the Appellant, has had no opportunity to participate in the adjudication of the state law issues presented nor in the adjudication of the putative federal claim.

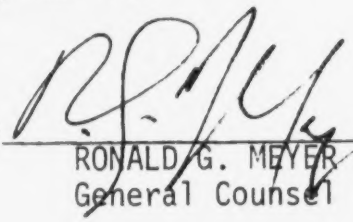
We can perceive no basis for the Court to recede from its long-standing tradition of dismissing an appeal which seeks to review federal constitutional claims which were not considered in the proceedings below. Lynch v. New York ex rel. Pierson, 293 U.S. 52 (1934); Stembridge v. State of Georgia, 343 U.S. 541 (1952); Durley v. Mayo, 351 U.S. 277 (1956) rehearing den. 352 U.S. 859 (1956).

CONCLUSION

The appeal should be dismissed, or in the alternative, the judgment of the Supreme Court of Florida should be affirmed.

Respectfully submitted,

FTP-NEA
FLORIDA TEACHING PROFESSION-
NATIONAL EDUCATION ASSOCIATION
213 South Adams Street
Tallahassee, Florida 32301
904/222-4702

By: 

RONALD G. MEYER
General Counsel

No. 80-1313

FILED
MAR 16 1981

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

Julia McCain Lampkin-Asam, Ph.D.
Appellant

vs.

FTP-NEA (Florida Teaching Profession-
National Education Association)
Appellee

On Appeal from The Supreme Court
of Florida

REPLY BRIEF OF APPELLANT

Julia McCain Lampkin-Asam, Ph.D.
Appellant
Representing Self
2243 Gorham Avenue
Ft. Myers, Florida 33907

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No. 80-1313

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Appellant

vs.

FTP-NEA (Florida Teaching Profession-National Education Association)
Appellee

On Appeal from The Supreme Court of Florida

REPLY BRIEF OF APPELLANT

STATEMENT OF THE CASE

The Appellant adheres to the Statement of the Case articulated in the Jurisdictional Statement Brief by the Appellant, dated February 2, 1981.

The Appellant adheres to the Appendix presented in the Jurisdictional Statement of the Appellant showing what happened in the courts below.

This Reply Brief by the Appellant is written as a rebuttal to the "Brief for Amicus Curiae The State of Florida" and as a motion to deny the conclusion by State of Florida to dismiss or affirm because substantial federal question exists.

The Appellant is appealing the final judgment of the Supreme Court of Florida refusing to accept jurisdiction of the state case which had not been tried by a jury and which had been decided erroneously by a judge for a fraudulent reason not in the record, and was per curiam affirmed erroneously by the District Court of Appeal, First District, State of Florida. The substantial federal question exists whether the new Florida Statute, Article V, section 3(b)3, Florida Constitution (quoted and discussed in the Jurisdictional Statement by Appellant) is repugnant to the U.S. Constitution (Amendments 5 and 14 "due process" and Amendment 14 "equal protection"? Since the merits of this case was not reviewed in any state court and the case was not tried by a jury the U.S. Constitutional rights of the Appellant to "due process" and "equal protection" of the law were violated.

The Supreme Court of Florida dismissed the Petition for Review filed in that Court (see Exhibit A in the Appendix of the Appellant Jurisdictional Statement Brief), citing the decision in Jenkins v. State, 385 So 2d 1356 (Fla. 1980), which construed Article V, Section 3(b)3 of the Florida Constitution, as amended, to prohibit jurisdiction by the Florida Supreme Court to review a District Court of Appeal decision, where the decision read in its entirity "per curiam affirmed".

The State of Florida through its amicus curiae brief on pp. 3 and 5 admits to not examining the record on appeal which was in the same city, Tallahassee, Florida, located across the street in the Supreme Court Building from the office of the Attorney General of the State of Florida. If the State of Florida was interested in justice, the record would be examined before writing an amicus curiae brief when the record below clearly shows that the Appellant's rights to "due process" in any state court based on the merits of the case has been denied.

In the Circuit Court the judge erroneously decided summary judgment based on a false statement by the judge who stated (see a5 in the appendix of the Jurisdictional Statement by the Appellant)

> "The file reflects that the Plaintiff received the legal representation to which she was entitled through her contract of membership with the Defendant."

In reality the record does not reflect that the FTP-NEA gave any legal representation to Dr. Julia Asam in the school year 1977-78. See quote from letter in record (p. 62) and Exhibit G of the Amended Complaint. This letter from FTP-NEA dated July 18, 1979 states,

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

The District Court of Appeal, First District, just "per curiam affirmed" a fraudulent reason by the Circuit Judge since his decision of Summary Judgment was based on the above false statement.

Therefore, the conclusion in the Brief Amicus Curiae State of Florida to dismiss the case should be denied because a substantial federal question exists whereby a

Florida Statute, Article V, Section 3(b)3, Florida Constitution is repugnant to the U.S. Constitution Amendment 14 ("due process" and "equal protection" and Amendment 5, "due process".) This state statute has caused the U.S. Constitutional rights of "due process" and "equal protection" of the Appellant to be violated because the Supreme Court of Florida dismissed this case because the District Court of Appeal, First District, "per curiam affirmed" the decision of the circuit court. Therefore, the case was not decided according to its merits in any state court thus violating the "due process" rights of the Appellant.

SUMMARY OF ARGUMENT

The Appellant in this Appellant Reply Brief adheres to the Jurisdictional Statement Brief by Appellant concerning the "Questions Presented", "Constitutional Provisions and Statutes Involved" "Substantiality of the Questions Presented", and "Conclusion".

The Appellant Reply Brief will discuss in the Argument that the appeal should be considered because a substantial federal question exists. Therefore, the Brief Amicus Curiae State of Florida conclusion that the case be dismissed or the Supreme Court of Florida decision be affirmed should be denied because a substantial federal question exists. The federal question is whether a state statute is repugnant to the U.S. Constitutional rights of an individual? This federal question is discussed below in the Argument and the Supreme Court of the United States can take jurisdiction under 28 USC section 1257(2). The federal question is, can the new Florida Statute, Article V, section 3(b)3, Florida Constitution, infringe upon the U.S. Constitutional rights of an individual to "due process" and "equal protection" under the 14th amendment and "due process" in the 5th amendment?

The Supreme Court of the United States can take original jursidction of the state case according to 28 USC section 2106 which states,

> "The Supreme Court of any other court of appellate jurisdiction may affirm, modify, vacate, set aside, or reverse any judgment... and may remand the cause and direct the entry of such appropriate judgment... or require such further proceedings to be had as may be just under the circumstances."

United States Supreme Court may review directly the decision of the highest state courts on the constitutionality, under the Federal Constitution, of state statutes. Horwitt v. Horwitt, D.C. Conn. 1950, 90 F Supp. 528.

Also see In re Elmore, 1967, 382 F 2d 125, 127, U.S. App. D.C. 176; Greenbelt Co. op. Pub. Ass'n v. Bresler, Md. 1970, 90 S Ct 1537, 398 U.S. 6, 26 L Ed 2d 6; Bantam Books, Inc. v. Sullivan, R.I. 1963, 83 S Ct 631, 372 U.S. 58, 9 L Ed 2d 584.

While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which is asserted to violate the Federal Constitution, the name given to the statute is not conclusive, and if that is to violate the Constitution of the United States, that law must be declared void. (Emphasis added.) Standard Oil Co. v. Graves, Wash. 1919, 39 S Ct 320, 249 U.S. 389, 63 L Ed. 662.

ARGUMENT

The appeal presents substantial federal question.

The Supreme Court of the United States can take jurisdiction under 28 USC section 1257(2)

which states,

> "By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

In the instant case, a new Florida Statute, Article V, section 3(b)(3) of the Florida Constitution has prevented the Appellant access to the highest court of the State, The Supreme Court of Florida. Thus, the Appellant's constitutional rights of "due process" in a court (5th and 14th amendments to the U.S. Constitution) and equal protection of the law (14 amendment to the U.S. Constitution) have been infringed by this new Florida Statute (Article V, section 3(b)3, Florida Constitution) because the Appellant's right to a trial by a jury was blocked by the erroneous and fraudulent decision of summary judgment by a circuit court judge.

The Appellant's constitutional rights of "due process" (5th and 14th amendments to the U.S. Constitution) are violated by the circuit judge making a judicial error not based on the record and by the circuit judge granting a summary judgment in a negligent case of a teacher's union (FTP-NEA) not representing the teacher. The Appellant's constitutional rights were further violated when the District Court of Appeal, First District, of the State of Florida, affirmed "Per curiam affirmed" the circuit court decision of summary judgment with the justices writing no opinion leading to the Florida Statute, Article 5, section 3(b)(3) of the Florida Constitution preventing the Appellant access to the highest court of the state, The Supreme Court of Florida.

Therefore, the new Florida Statute, Article V, section 3(b)3, Florida Constitution, was repugnant to the U.S. Constitution (amendment 14 "due process"and "equal protection" and amendment 5 "due process") because these U.S. Constitutional rights ("due process" and equal protection) were violated by the Florida Statute, Article V, section 3(b)3 due to the fact the Appellant did not have access to the highest state court, The Supreme Court of Florida. Further, the Appellant did not have the case reviewed on the merits in any state court. See Standard Oil Co. v. Graves (supra).

CONCLUSION

1. The Supreme Court of the United States should take jurisdiction of the instant case under 28 USC 1257(2) and allow the Appellant to write an Appellant's Merit Brief.

2. The new Florida Statute, Article V, section 3(b)3 of the Florida Constitution did infringe upon the Appellant's constitutional rights of "due process" (5th and 14th Amendments to the U.S. Constitution) and equal protection of the law (14th Amendment to the U.S. Constitution) because the Appellant was not allowed access to the highest court of the state, (The Supreme Court of Florida) due to the new Florida Statute.

3. The"Brief Amicus Curiae The State of Florida"should not be considered by the Supreme Court of the United States since the State of Florida failed to review the record and see that the Appellant's rights of "due process" were violated in the state courts.

4. The Conclusion in the Brief Amicus Curiae The State of Florida that the case should be dismissed or affirmed should be denied, based on the fact that a substantial federal question exists.

5. As an alternative, the decision by the Supreme Court of Florida not to review the case should be reversed since a Florida Statute is repugnant to the U.S. Constitution and the Supreme Court of the United States can order the Supreme Court of Florida to review the merits of the state case.

6. The Supreme Court of the United States does have jurisdiction in a case when a state statute infringes on the federal constitution. The Supreme Court of the United States can take original jurisdiction to see that justice is done or The Supreme Court of the United States can remand to a lower appellate court with instructions since the Appellant's "due process" rights were violated.

Respectfully submitted,

Julia McCain Lampkin-Asam

Julia McCain Lampkin-Asam, Ph.D.
Appellant, Representing Self
2243 Gorham Ave.
Ft. Myers, Florida 33907

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th of March 1981 a copy of the above Reply Brief of the Appellant was mailed to the State of Florida, Hon. Gov. Daniel Robert Graham and the Attorney General, Jim Smith, The Capitol, Tallahassee, Florida; The Supreme Court of Florida and the District Court of Appeal, First District, The Supreme Court Building, Tallahassee, Florida; Circuit Court of the Second Judicial Circuit in and for Leon County, Leon County Courthouse, Tallahassee, Florida and FTP-NEA, (Florida Teaching Profession-National Education Association) Mr. John Myrick, President, and Mr. Ronald Meyer, Attorney, 213 S. Adams St., Tallahassee, Florida.

By: Julia McCain Lampkin-Asam
Julia McCain Lampkin-Asam, Ph.D.

No. 80-1313

MAY 4 1981

ALEXANDER L...

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

Julia McCain Lampkin-Asam, Ph.D.
Appellant

vs.

FTP-NEA (Florida Teaching Profession-National Education Association)
Appellee

On Appeal from The Supreme Court of Florida

Brief Opposing Motion to Dismiss or Affirm

Julia McCain Lampkin-Asam, Ph.D.
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80-1313

No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

Julia McCain Lampkin-Asam, Ph.D.
Appellant

vs.

FTP-NEA (Florida Teaching Profession-
National Education Association)
Appellee

On Appeal from The Supreme Court
of Florida

Brief Opposing
Motion to Dismiss or Affirm

This Appellant's Brief is opposing the Appellee's Motion to Dismiss or Affirm because federal question exists whereby a state law (Article V, section 3(b)(3) of the Florida Constitution is repugnant to the U.S. Constitution (specifically

"due process" of the 5th and 14th Amendments to the U.S. Constitution and "equal protection" of the 14th Amendment to the U.S. Constitution) of the Appellant to have access to the highest court of the state, The Supreme Court of Florida. (See 28 U.S.C. 1257(2). Further, the Appellant respectfully requests the U.S. Supreme Court to take original jurisdiction of the instant case since a state law (Article V section 3(b)(3), Florida Constitution) is repugnant to the U.S. Constitution (specifically the 5th and 14th Amendments), and since the FTP-NEA has claimed legal representation when no legal representation was provided. (See 28 U.S.C. 2106).

STATEMENT OF THE CASE

The Appellant adheres to the Statement of the Case articulated in the Jurisdictional Statement Brief by the Appellant, dated February 2, 1981. The Appellant adheres to the Appendix presented in the Jurisdictional Statement Brief of the Appellant showing what happened in the courts below. The Appellant further adheres to the Statement of the Case articulated in the Reply Brief of Appellant to the "Brief for Amicus Curiae State of Florida" dated March 13, 1981.

The Appellant adheres to the Questions Presented in the Jurisdictional Statement Brief and makes the following questions: (1) Has Article 5, section 3(b)(3) of Florida Constitution infringed upon Appellant's right to have access to Florida Supreme Court? and (2) Can teachers' union claim representation at arbitration when it was not present and when in fact it admits that it did not provide legal assistance?

The action subtending the instant appeal arose when FTP-NEA, teachers' union failed to legally represent Appellant at arbitration. FTP-NEA's local affiliate, Teachers Association Lee County (TALC) was dependant on FTP-NEA according to the brochures to legally represent teachers at the arbitration stage of the grievance. On p. 3 of the Appellee's Brief, "Motion to Dismiss Appeal..." the FTP-NEA is perpetrating a fraud on the U.S.Supreme Court by claiming legal representation

quote from p. 3,

"Pursuant to such policy, legal representation was accorded to the Appellant by the FTP-NEA in the conduct of several grievance proceedings which she had initiated with her employer."

when no legal representation was provided in the school year 1977-78. See letter from FTP-NEA p. 62 in Record and Exhibit G of the Amended Complaint. This letter from FTP-NEA dated July 18, 1979 states,

"FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

Further FTP-NEA was not present at two arbitrations.

The Appellant takes exception to the following statement made by Appellee on p. 3 which states,

"In accordance with the legal services policy of the FTP-NEA, the Appellant's legal case was reviewed and determined to be <u>without a sound legal basis</u>." (Emphasis added.)

The point is that a sound legal basis existed for the arbitration case as evidenced in the Florida case, <u>Lake County Education Association v. School Board of Lake County</u>, 360 So 2d 1280 at 1284 which states,

"Where an agreement has been reached on procedures, the arbitrator's decision granting a nontenured teacher relief because of the failure to follow such procedures has been upheld."

Also see Cohoes City School District v. Cohoes Teachers Association, 40 N.Y. 2d 774, 390 N.Y.S 2d 53, 358 N.E. 2d 878 (N.Y. Ct App. 1976); School Committee of West Bridgewater v. West Bridgewater Teachers' Association 360 N.E. 2d 886 (Mass.1977).

FTP-NEA failed to respond to the second arbitration at all thus FTP-NEA showed negligence per se and failed in the union's duty of fair representation by not being present at two arbitrations.

The FTP-NEA on pp. 3-4 made an incorrect statement, quoted below,

"The Appellant did not exhaust the internal procedures available to her in seeking to overturn the non-funding determination."

because the Appellant appealed to the NEA (National Education Association) the national affiliate, who refused to provide legal representation. (See record p. 71, which is Exhibit K, attached to the Amended Complaint).

The FTP-NEA was incorrect on p. 4 when the following statement was made; quoted,

"The trial court accorded the Appellant broad latitude and carefully considered all of the issues presented and finally entered summary judgment in favor of the FTP-NEA"

because the Circuit Judge in his order made a false statement in his order as the reason he made the Summary Judgment in favor of the Defendant.

The Circuit Judge in his order (see pp. a-4 through a-5 of Appendix to Appellant's

Jurisdictional statement Brief), stated,

> "The file reflects that the Plaintiff received the legal representation to which she was entitled through her contract of membership with the Defendant."

This statement by the Circuit Judge is impeached by FTP-NEA own letter dated July 18, 1979, (Record p. 62 and Exhibit G attached to the Amended Complaint).

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

The District Court of Appeal, First District, just "per curiam affirmed" with no opinion a fraudulent reason by the Circuit Judge since his decision of Summary Judgment was based on the above false statement.

The Appellant's rights to "due process" in any state court based on the merits of the case has been denied.

The substantial federal question exists whether the new Florida Statute, Article V, section 3(b)(3), Florida Constitution, (quoted and discussed in the Jurisdictional Statement Brief by Appellant) is repugnant to the U.S. Constitution (Amendments 5 and 14 "due process" and Amendment 14 "equal protection"? Since the merits of this case was not reviewed in any state court and the case was not tried by a jury the U.S. Constitutional rights of the Appellant to "due process" and "equal protection" of the law were violated.

SUMMARY OF ARGUMENT

The Appellant in this Brief Opposing the Appellee's Motion to Dismiss or Affirm adheres to the Jurisdictional Statement Brief by Appellant concerning the "Questions Presented", "Constitutional Provisions and Statutes Involved, "Substantiality of the Questions Presented", and "Conclusion". The Appellant in this Brief further adheres to the Reply Brief for Appellant responding to the Brief Amicus Curiae State of Florida.

The Appellee's Motion to Dismiss or Affirm should be denied because substantial federal questions exists in this instant case. The Supreme Court of the United States can take jurisdiction under 28 USC section 1257 (2). The federal questions is,can the new Florida Statute, Article V, section 3(b)(3), Florida Constitution, infringe upon the U.S. Constitutional rights of an individual to "due process" and equal protection" under the 14th amendment and "due process" in the 5th amendment?

The Supreme Court of the United States can take original jurisdiction of the state case according to 28 USC section 2106 which states,

> "The Supreme Court of any other court of appellate jurisdiction may affirm, modify, vacate, set aside, or reverse any judgment...,and may remand the cause and direct the entry of such appropriate judgment...or requite such further proceedings to be had as may be just under the circumstances."

United States Supreme Court may review directly the decision of the highest state courts on the constitutionality, under the Federal Constitution, of state statutes.

See Horwitt v. Horwitt, D.C. Conn. 1950, 90 F Supp., 528. Also see In re Elmore, 1967, 382 F 2d 125, 127, U.S. App. D.C. 176; Greenbelt Co. op. Pub. Ass'n v. Bresler, Md. 1970, 90 S Ct 1537, 398 U.S. 6, 26 L Ed 2d 6; Bantam Books, Inc. v. Sullivan, R.I. 1963, 83 S Ct 631, 372 U.S. 58, 9 L Ed 2d 584; Standard Oil Co. v. Graves, Wash. 1919, 39 S Ct 320, 249 U.S. 389, 63 L Ed. 662.

ARGUMENT

The appeal presents substantial federal question.

The new Florida Statute, Article V, section 3(b)(3), Florida Constitution, was repugnant to the U.S. Constitutional rights (amendment 14 "due process" and "equal protection" and amendment 5 "due process") because the Appellant did not have access to the highest state court. The merits of this instant case have not been tried in any state court because the Appellant's right to a trial by a jury was blocked by the erroneous and fraudulent decision of summary judgment by a circuit court judge. The Appellant's constitutional rights were further violated when the District Court of Appeal, First District, of the State of Florida affirmed "per curiam affirmed" the circuit court decision of summary judgment with the justices writing no opinion leading to the Florida Statute, Article 5, section 3(b)(3) of the Florida Constitution preventing the Appellant access to the highest court of the state, The Supreme Court of Florida. (See p. 5 of this Brief for quote from Circuit Judge for reason why he made summary judgment. This statement by the Circuit Judge is impeached by FTP-NEA own letter dated July 18, 1979,

(Record p. 62 and Exhibit G attached to the Amended Complaint).

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

Therefore, FTP-NEA is perpetrating a fraud on this court claiming any legal representation because the FTP-NEA provided no legal representation in the school year 1977-78 and FTP-NEA was not present at any arbitration. See Vaca v. Sipes, 386 U.S. 171, 17 L Ed 2d 842, 87 S Ct 903, which states,

> "A union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion."

Also see Fredericks v. School Board of Monroe County, Fla. App. 307 So 2d 463, which states,

> "Teachers' association had standing to bring suit on behalf of nontenured teacher to compel school board to exhaust the grievance procedure it adopted and to submit teacher's grievance to an arbitrator."

Therefore, if the Appellant had not been blocked by the new Florida Statute, Article V, section 3(b)(3) preventing access to the state highest court, The Supreme Court of Florida, the instant case would have been reversed as a matter of law.

The Supreme Court of the United States can take jurisdiction under 28 USC section 1257(2) which states,

> "By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

(Note footnote 1 on p. 9 of the Appellee's Brief is incorrect based on the law cited Vaca v. Sipes, supra and Fredericks v. School Board of Monroe County supra).

The Supreme Court of the United States can take original jurisdiction

The Supreme Court of the United States according to 28 USC, section 2106, can take original jurisdiction because a new change in Florida law, Article V, section 3(b)(3) is repugnant to the U.S. Constitution and this new Florida law has blocked the Appellant access to the highest state court, The Supreme Court of Florida, where the instant case could have been reversed. Another reason why the Supreme Court of the United States can take original jurisdiction is due to the fact the FTP-NEA has perpetrated a fraud on the court by claiming to have provided legal representation when no legal representation was provided in the school year 1977-78 according to FTP-NEA own letter dated July 18, 1979, (Record p. 62 and Exhibit G attached to the Amended Complaint),

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

Further, no legal representative from FTP-NEA was present at two arbitrations of the Appellant. Further, this same quote from Exhibit G impeaches the statement by the circuit judge giving the following reason for summary judgment, (see a-4,a-5 Appendix to the Jurisdictional Brief),

> "The file reflects that the Plaintiff received the legal representation to which she was entitled through her contract of membership with the defendant." This statement by the judge is incorrect. The District Court of Appeal, First District, State of Florida "per curiam affirmed" this fraudulent and erroneous summary judgment by the circuit court judge.

CONCLUSION

1. The Supreme Court of the United States should take jurisdiction of the instant case under 28 USC 1257(2) and allow the Appellant to write an Appellant's Merit Brief.

2. The new Florida Statute, Article V, section 3(b)(3) of the Florida Constitution did infringe upon the Appellant's Constitutional rights of "due process" (5th and 14th Amendments to the U.S. Constitution) and equal protection of the law (14th Amendment to U.S. Constitution) because the Appellant was not allowed access to the highest court of the state, The Supreme Court of Florida, due to the new Florida Statute.

3. The Appellee's "Motion to dismiss appeal or, in the alternative to affirm decision below" should be denied, based on the fact that a substantial federal question exists.

4. As an alternative, the decision by the Supreme Court of Florida not to review the case should be reversed since a Florida Statute is repugnant to the U.S. Constitution and the Supreme Court of the United States can order the Supreme Court of Florida to review the merits of the case.

5. The Supreme Court of the United States does have jurisdiction in a case when a state statute infringes on the federal constitution. The Supreme Court of the United States can take original jurisdiction to see that justice is done or The Supreme Court of the United States can remand to a lower appellate court with instructions since the Appellant's "due process" rights were violated because the case was not decided on its merits in any state court.

Respectfully submitted,

Julia McCain Lampkin-Asam

Julia McCain Lampkin-Asam, Ph.D.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd of May 1981 a copy of the above Brief Opposing Motion to Dismiss or Affirm of the Appellant was mailed to the State of Florida, hon. Gov. Daniel Robert Graham and the Attorney General, Jim Smith, The Capitol, Tallahassee, Florida; The Supreme Court of Florida and the District Court of Appeal, First District, The Supreme Court Building, Tallahassee, Florida; Circuit Court of the Second Judicial Circuit in and for Leon County, Leon County Courthouse, Tallahassee, Florida and FTP-NEA, (Florida Teaching Profession-National Education Association) Mr. John Myrick, President, and Mr. Ronald Meyer, Attorney, 213 S. Adams St. Tallahassee, Florida 32301.

Julia McCain Lampkin Asam

By: Julia McCain Lampkin-Asam, Ph.D.
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No. 80-1313

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

JULIA McCAIN LAMPKIN-ASAM,
PH.D., Appellant,

v.

FTP-NEA (FLORIDA TEACHERS
PROFESSION-NATIONAL EDUCATION
ASSOCIATION), Appellee.

ON APPEAL FROM THE SUPREME
COURT OF FLORIDA

BRIEF FOR AMICUS CURIAE THE STATE OF FLORIDA

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No. 80-1313

IN THE
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OCTOBER TERM, 1981

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v.

FTP-NEA (FLORIDA TEACHERS
PROFESSION-NATIONAL EDUCATION
ASSOCIATION), Appellee.

ON APPEAL FROM THE SUPREME
COURT OF FLORIDA

BRIEF FOR AMICUS CURIAE THE STATE OF FLORIDA

INTEREST OF AMICUS CURIAE

The Attorney General of the State of Florida, pursuant to Rule 36.4, Rules of the Supreme Court of the United States respectfully submits this brief on behalf

of the State of Florida as amicus curiae urging that this appeal be dismissed on the grounds that it fails to present a substantial federal question. Alternatively, the State of Florida submits that the judgment of the First District Court of Appeal of Florida should be summarily affirmed.

The Appellant seeks review in this Court of the Supreme Court of Florida's Order dismissing her Petition for Review of her state court action. Additionally, Appellant seeks to have this Court declare invalid Article V, Section 3(b)(3) of the Florida Constitution, pursuant to which the Supreme Court of Florida declined to review the Final Judgment of the First District Court of Appeal of Florida. Because the State, or any other

person interested in defending the referenced rule, was not named as a party below, the State has a vital interest in appearing as amicus curiae in support of its constitutional provision.

STATEMENT OF THE CASE

As demonstrated throughout Appellant's jurisdictional statement, her appeal to this Court stems from a State civil action wherein Appellant was Plaintiff, and the Florida Teaching Profession -National Education Association was the Defendant. While the State of Florida, as amicus curiae has not had the benefit of examining the record in said action, it appears that Appellant sued Appellee in that action for failure to provide legal assistance to Appellant, allegedly pursuant to a contract between the par-

ties. As demonstrated by Exhibit "D" to Appellant's jurisdictional statement, Final S ımmary Judgment was rendered by a State circuit court, in favor of Appellee, which included the finding that there was no genuine issue of material fact. Appellant filed her appeal from that judgment, and the judgment was affirmed, per curiam, by the First District Court of Appeal of Florida, and thereupon her Petition for Rehearing was denied. As demonstrated by Exhibit "A" to Appellant's jurisdictional statement, the Supreme Court of Florida dismissed her Petition for Review filed in that Court, citing its decision in Jenkins v. State, 385 So.2d 1356 (Fla. 1980), which construed Article V, Section 3(b)(3) of the Florida Constitution, as amended, to pro-

hibit jurisdiction by the Florida Supreme Court to review a District Court of Appeals' decision, where the decision read in its entirity "per curiam affirmed". Thus it further appears that the final judgment which Appellant seeks to have reviewed, by appeal, in this Court, is not the judgment of the Supreme Court of Florida, but is actually that judgment rendered by the First District Court of Appeal, and which affirmed the trial court's granting of summary judgment in favor of Appellee.

While the amicus curiae has not had the benefit of examining the record on appeal, it appears that the question of the United States constitutionality of the referenced Florida Constitutional provision was not raised in the state

courts below, but is being presented for the first time in this appeal.

SUMMARY OF ARGUMENT

The appeal should be dismissed for want of a substantial federal question. It appears that there has been no decision by any state court construing the validity of Article V, Section 3(b)(3) of the Florida Constitution, under the Constitution, treaties, or laws of the United States. Rather, it appears that the Supreme Court of Florida merely refused jurisdiction of Appellant's appeal from the final judgment of the First District Court of Appeal of Florida, which affirmed the trial court's granting of summary judgment to Appellee. The final summary judgment entered by the

state trial court contains no reference to any federal claim raised by Appellant, but rather appears to address the merits of Appellant's civil suit on adequate and independent state grounds. Accordingly, Appellant mistakenly invokes the appellate jurisdiction of this Court, by relying on a Florida Constitutional provision which apparently was not presented to the state courts for review, on federal constitutional or statutory grounds, and which was apparently only utilized by the Supreme Court of Florida in declining to exercise its appellate jurisdiction over Appellant's state court claim. Accordingly, Appellant's alleged claim for denial of her right to due process and equal protection of the laws under the Fifth and Fourteenth Amendments to

the United States Constitution, were not raised below, and thus may not be raised for the first time in this appeal.

ARGUMENT

THE APPEAL PRESENTS NO SUBSTANTIAL FEDERAL QUESTION.

Appellant has mistakenly invoked the appellate jurisdiction of this Court. The only United States statutory provision cited by the Appellant in her jurisdictional statement which could arguably confer jurisdiction on this Court is 28 U.S.C. §1257 (2), which confers appellate jurisdiction on this Court from final judgments rendered by the highest state court which could have reviewed the matter,

> . . . where is drawn in question the validity of a statute of any state on the ground of its being

> repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

First, Appellant incorrectly identifies this appeal as lying from the Supreme Court of Florida. The appeal, if otherwise proper, would lie only from the final order entered by the First District Court of Appeal of Florida, denying her petition for rehearing, and which in effect affirmed the trial court's granting of summary judgment to Appellee. The Supreme Court of Florida, as evidenced by Exhibit A to Appellant's jurisdictional statement, did not review the judgment of the First District Court of Appeal on its merits, but rather dismissed Appellant's state petition for review, noting that it was without jurisdiction and citing

Jenkins v. State, 385 So.2d 1356 (Fla. 1980). The Jenkins decision construed Article V, Section 3(b)(3), of the Florida Constitution, as it became effective on April 1, 1980, and which provision conferred jurisdiction on the Florida Supreme Court to review:

> Any decision of a district court of appeal . . . that expressly and directly conflicts with a decision of another district court of appeal or the supreme court on the same question of law.

Thus, in Jenkins the Supreme Court of Florida concluded that it lacks jurisdiction to review per curiam decisions of the Florida District Courts of Appeal which are rendered without an opinion. As evidenced by Exhibit C to Appellant's jurisdictional statement, such was the nature of the decision of the First

District Court of Appeal of Florida in Appellant's state court action.

Accordingly, it is obvious that the Supreme Court of Florida had no occasion to address any federal question which is now raised by Appellant for the first time, and that pursuant to 28 U.S.C. §1257 (2), the "highest court of a State in which a decision could be had", as pertains to this action, relates to the decision of the First District Court of Appeal of Florida affirming the final summary judgment entered by the trial court. See Sullivan v. State of Texas, 207 U.S. 416 (1908); Nash v. Florida Industrial Commission, 389 U.S. 235 (1967); Interstate Circuit v. City of Dallas, 390 U.S. 676 (1968).

Inasmuch as Appellant's constitutional claim, that the referenced Florida Constitutional provision deprives her of federal constitutional rights, was apparently not raised or decided by the state courts below, her appeal should be dismissed for lack of a substantial federal question. This Court has repeatedly held that it will not consider a question not raised below. See e.g. Michel v. Louisiana, 350 U.S. 91 (1956); F. G. Oxley Stave Co. v. Butler County, 166 U.S. 648, 655 (1897):

> The words "specially set up or claimed" imply that if a party intends to invoke for the protection of his rights the Constitution of the United States, or some treaty, statute, commission, or authority of the United States, he must so declare; and unless he does so declare, "specially," that is, unmistakenably,

> this court is without authority to re-examine the final judgment of the state court.

Here it appears that final summary judgment was entered by the Florida trial court, in favor of Appellee, and that Appellant's now alleged federal constitutional claim was not raised before that court, and hence was not an issue on appeal before the First District Court of Appeal of Florida. Indeed, as a practical matter, it seems that the federal question raised in Appellant's jurisdictional statement arose only after the Supreme Court of Florida denied her petition for state review. As held by this court in Whitney v. California, 274 U.S. 357, 360 (1927):

> It has long been settled that this court acquires no jurisdiction to review

> the judgment of a state court of last resort on a writ of error, unless it affirmatively appears on the face of the record that a Federal question constituting an appropriate ground for such review was presented in and expressly or necessarily decided by such state court. . .

Inasmuch as from the Exhibits appended to Appellant's jurisdictional statement, it appears that her federal constitutional claim was not part of the record below, this Court should follow its long rooted precedent, and dismiss her appeal. See e.g. Lynch v. New York ex rel. Pierson, 293 U.S. 52 (1934).

The lack of appellate jurisdiction in this court is perhaps most aptly demonstrated by the Court's decision in John v. Paullin, 231 U.S. 583, 5-7 (1913), where the Court held in part as follows:

As the supreme court of the state did not pass upon the merits of the case or upon the correctness of any of the rulings below, but, on the contrary, held that it was powerless to do so because its appellate jurisdiction was not invoked in accordance with the laws of the state, we do not perceive any theory upon which its judgment of dismissal may be reviewed by us consistently with the familiar limitations upon our authority. . . . Certainly no Federal right was denied by that court, and if, as was held by it, its appellate jurisdiction was not properly invoked, no Federal question was before it for decision.

* * *

Without any doubt it rests with each state to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction

> and the rules of practice to be applied in its exercise; and the state laws and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law.
>
> * * *
>
> Thus it appears that nothing was decided but the preliminary question of the court's jurisdiction to pass upon the controverted matters shown in the record, and that this question was resolved according to what the court deemed to be the true construction and effect of applicable provisions of the Constitution and laws of the state. In short, the judgment of dismissal turned entirely upon a question of local law.

Accordingly, since the opinion of the Supreme Court of Florida, in Appellant's state court action (Exhibit A of her jurisdictional statement) clearly states

that said Court lacked jurisdiction, and thus her petition for review was dismissed, and cited in support thereof a prior decision by that Court construing the amended Florida constitutional provision which Appellant attacks herein, it is obvious that there was no decision on the merits of Appellant's federal constitutional claim, which is apparently raised for the first time in this appeal. Thus this Court should follow its decision in John v. Paullin, supra, and dismiss Appellant's appeal, for want of a substantial federal question.

CONCLUSION

For the reasons stated herein, this appeal should be dismissed, or the judgment of the Surpeme Court of Florida should be affirmed.

Respectfully submitted,

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